

**ASSEMBLY BILL**

**No. 780**

**Introduced by Assembly Member Harman**

February 19, 2003

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An act to amend Sections 56043 and 56505 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 780, as introduced, Harman. Special education: due process hearing.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act (IDEA), in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law prescribes procedural safeguards to that end, including a due process hearing that may be requested by a parent, guardian, or other party. Existing law requires that a request for a due process hearing be filed within 3 years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

This bill would, instead, require that a request for a due process hearing be filed within one year from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 56043 of the Education Code is amended to read:

56043. The primary timelines affecting special education programs are as follows:

(a) A proposed assessment plan shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension, pursuant to subdivision (a) of Section 56321.

(b) A parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision, pursuant to subdivision (c) of Section 56321.

(c) A parent or guardian shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend, pursuant to subdivision (b) of Section 56341.5.

(d) An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written consent for assessment, unless the parent or guardian agrees, in writing, to an extension, pursuant to Section 56344.

(e) Beginning at age 14, and updated annually, a statement of the transition service needs of the pupil shall be included in the pupil's individualized education program, pursuant to subdivision (a) of Section 56345.1.

(f) Beginning at age 16, or younger, and annually thereafter, a statement of needed transition services shall be included in the pupil's individualized education program, pursuant to subdivision (b) of Section 56345.1.

(g) A pupil's individualized education program shall be implemented as soon as possible following the individualized education program meeting, pursuant to Section 3040 of Title 5 of the California Code of Regulations.

1 (h) An individualized education program team shall meet at  
2 least annually to review a pupil's progress, the individualized  
3 education program, including whether the annual goals for the  
4 pupil are being achieved, the appropriateness of the placement,  
5 and to make any necessary revisions, pursuant to subdivision (d)  
6 of Section 56343, subdivision (a) of Section 56380, and Section  
7 3068 of Title 5 of the California Code of Regulations.

8 (i) A reassessment of a pupil shall be conducted at least once  
9 every three years or more frequently, if conditions warrant a  
10 reassessment and a new individualized education program to be  
11 developed, pursuant to Section 56381.

12 (j) A meeting of an individualized education program team  
13 requested by a parent or guardian to review an individualized  
14 education program pursuant to subdivision (c) of Section 56343  
15 shall be held within 30 calendar days, not counting days in July and  
16 August, from the date of receipt of the parent's or guardian's  
17 written request, pursuant to Section 56343.5.

18 (k) The administrator of a local program under this part shall  
19 ensure that the pupil is immediately provided an interim placement  
20 for a period not to exceed 30 calendar days whenever a pupil  
21 transfers into a school district from a school district not operating  
22 programs under the same local plan in which he or she was last  
23 enrolled in a special education program pursuant to Section 56325.

24 (l) The parent or guardian shall have the right and opportunity  
25 to examine all school records of the child and to receive copies  
26 within five calendar days after a request is made by the parent or  
27 guardian, either orally or in writing, pursuant to Section 56504 and  
28 Chapter 6.5 (commencing with Section 49060) of Part 27.

29 (m) Upon receipt of a request from an educational agency  
30 where an individual with exceptional needs has enrolled, a former  
31 educational agency shall send the pupil's special education  
32 records, or a copy thereof, within five working days, pursuant to  
33 subdivision (a) of Section 3024 of Title 5 of the California Code  
34 of Regulations.

35 (n) The department shall do all of the following:

36 (1) Have a time limit of 60 calendar days after a complaint is  
37 filed with the state education agency to investigate the complaint.

38 (2) Give the complainant the opportunity to submit additional  
39 information about the allegations in the complaint.

1 (3) Review all relevant information and make an independent  
2 determination as to whether there is a violation of a requirement  
3 of this part or Part B of the Individuals with Disabilities Education  
4 Act (20 U.S.C. Sec. 1400 et seq.).

5 (4) Issue a written decision, pursuant to Section 300.661 of  
6 Title 34 of the Code of Federal Regulations.

7 (o) A prehearing mediation conference shall be scheduled  
8 within 15 calendar days of receipt by the superintendent of the  
9 request for mediation, and shall be completed within 30 calendar  
10 days after the request for mediation, unless both parties to the  
11 prehearing mediation conference agree to extend the time for  
12 completing the mediation, pursuant to Section 56500.3.

13 (p) Any request for a due process hearing arising from  
14 subdivision (a) of Section 56501 shall be filed within ~~three years~~  
15 *one year* from the date the party initiating the request knew or had  
16 reason to know of facts underlying the basis for the request,  
17 pursuant to subdivision (j) of Section 56505.

18 (q) The superintendent shall ensure that, within 45 calendar  
19 days after receipt of a written due process hearing request, the  
20 hearing is immediately commenced and completed, including any  
21 mediation requested at any point during the hearing process, and  
22 a final administrative decision is rendered, pursuant to subdivision  
23 (a) of Section 56502.

24 (r) If either party to a due process hearing intends to be  
25 represented by an attorney in the due process hearing, notice of that  
26 intent shall be given to the other party at least 10 calendar days  
27 prior to the hearing, pursuant to subdivision (a) of Section 56507.

28 (s) Any party to a due process hearing shall have the right to be  
29 informed by the other parties to the hearing, at least 10 calendar  
30 days prior to the hearing, as to what those parties believe are the  
31 issues to be decided at the hearing and their proposed resolution  
32 of those issues, pursuant to paragraph (6) of subdivision (e) of  
33 Section 56505.

34 (t) Any party to a due process hearing shall have the right to  
35 receive from other parties to the hearing, at least five business days  
36 prior to the hearing, a copy of all documents, including all  
37 assessments completed and not completed by that date, and a list  
38 of all witnesses and their general area of testimony that the parties  
39 intend to present at the hearing, pursuant to paragraph (7) of  
40 subdivision (e) of Section 56505.



1 (u) An appeal of a due process hearing decision shall be made  
2 within 90 calendar days of receipt of the hearing decision, pursuant  
3 to subdivision (i) of Section 56505.

4 (v) ~~When~~ If an individualized education program calls for a  
5 residential placement as a result of a review by an expanded  
6 individualized education program team, the individualized  
7 education program shall include a provision for a review, at least  
8 every six months, by the full individualized education program  
9 team of all of the following pursuant to paragraph (2) of  
10 subdivision (c) of Section 7572.5 of the Government Code:

11 (1) The case progress.

12 (2) The continuing need for out-of-home placement.

13 (3) The extent of compliance with the individualized education  
14 program.

15 (4) Progress toward alleviating the need for out-of-home care.

16 (w) No later than the pupil's 17th birthday, a statement shall be  
17 included in the pupil's individualized education program that the  
18 pupil has been informed of his or her rights that will transfer to the  
19 pupil upon reaching 18 years of age pursuant to Section 300.517  
20 of Title 34 of the Code of Federal Regulations, Section 56041.5,  
21 and paragraph (8) of subdivision (a) of Section 56345.

22 SEC. 2. Section 56505 of the Education Code is amended to  
23 read:

24 56505. (a) The state hearing shall be conducted in  
25 accordance with regulations adopted by the board.

26 (b) The hearing shall be held at a time and place reasonably  
27 convenient to the parent or guardian and the pupil.

28 (c) The hearing shall be conducted by a person knowledgeable  
29 in the laws governing special education and administrative  
30 hearings pursuant to Section 56504.5. The hearing officer shall  
31 encourage the parties to a hearing to consider the option of  
32 mediation as an alternative to a hearing.

33 (d) Pursuant to subsection (a) of Section 300.514 of Title 34  
34 of the Code of Federal Regulations, during the pendency of the  
35 hearing proceedings, including the actual state level hearing, or  
36 judicial proceeding regarding a due process hearing, the pupil shall  
37 remain in his or her present placement, except as provided in  
38 Section 300.526 of Title 34 of the Code of Federal Regulations,  
39 unless the public agency and the parent or guardian agree  
40 otherwise. A pupil applying for initial admission to a public school

1 shall, with the consent of his or her parent or guardian, be placed  
2 in the public school program until all proceedings have been  
3 completed. As provided in subsection (c) of Section 300.514 of  
4 Title 34 of the Code of Federal Regulations, if the decision of a  
5 hearing officer in a due process hearing or a state review official  
6 in an administrative appeal agrees with the pupil's parent or  
7 guardian that a change of placement is appropriate, that placement  
8 must be treated as an agreement between the state or local agency  
9 and the parent or guardian.

10 (e) Any party to the hearing held pursuant to this section shall  
11 be afforded the following rights consistent with state and federal  
12 statutes and regulations:

13 (1) The right to be accompanied and advised by counsel and by  
14 individuals with special knowledge or training relating to the  
15 problems of individuals with exceptional needs.

16 (2) The right to present evidence, written arguments, and oral  
17 arguments.

18 (3) The right to confront, cross-examine, and compel the  
19 attendance of witnesses.

20 (4) The right to a written, or, at the option of the parents or  
21 guardians, electronic verbatim record of the hearing.

22 (5) The right to written, or, at the option of the parent or  
23 guardian, electronic findings of fact and decisions. The record of  
24 the hearing and the findings of fact and decisions shall be provided  
25 at no cost to parents or guardians in accordance with paragraph (2)  
26 of subsection (c) of Section 300.509 of Title 34 of the Code of  
27 Federal Regulations. The findings and decisions shall be made  
28 available to the public after any personally identifiable  
29 information has been deleted consistent with the confidentiality  
30 requirements of subsection (c) of Section 1417 of Title 20 of the  
31 United States Code and shall also be transmitted to the Advisory  
32 Commission on Special Education pursuant to paragraph (4) of  
33 subsection (h) of Section 1415 of Title 20 of the United States  
34 Code.

35 (6) The right to be informed by the other parties to the hearing,  
36 at least 10 days prior to the hearing, as to what those parties believe  
37 are the issues to be decided at the hearing and their proposed  
38 resolution of those issues. Upon the request of a parent who is not  
39 represented by an attorney, the agency responsible for conducting

1 hearings shall provide a mediator to assist the parent in identifying  
2 the issues and the proposed resolution of the issues.

3 (7) The right to receive from other parties to the hearing, at least  
4 five business days prior to the hearing, a copy of all documents and  
5 a list of all witnesses and their general area of testimony that the  
6 parties intend to present at the hearing. Included in the material to  
7 be disclosed to all parties at least five business days prior to a  
8 hearing shall be all assessments completed by that date and  
9 recommendations based on the assessments that the parties intend  
10 to use at the hearing.

11 (8) The right, pursuant to paragraph (3) of subsection (a) of  
12 Section 300.509 of Title 34 of the Code of Federal Regulations, to  
13 prohibit the introduction of any evidence at the hearing that has not  
14 been disclosed to that party at least five business days before the  
15 hearing.

16 (f) The hearing conducted pursuant to this section shall be  
17 completed and a written, reasoned decision mailed to all parties to  
18 the hearing within 45 days from the receipt by the superintendent  
19 of the request for a hearing. Either party to the hearing may request  
20 the hearing officer to grant an extension. The extension shall be  
21 granted upon a showing of good cause. Any extension shall extend  
22 the time for rendering a final administrative decision for a period  
23 only equal to the length of the extension.

24 (g) The hearing conducted pursuant to this section shall be the  
25 final administrative determination and binding on all parties.

26 (h) In decisions relating to the placement of individuals with  
27 exceptional needs, the person conducting the state hearing shall  
28 consider cost, in addition to all other factors that are considered.

29 (i) ~~Nothing in this~~ This chapter ~~shall~~ does not preclude a party  
30 aggrieved by the findings and decisions in a hearing under this  
31 section from exercising the right to appeal the decision to a state  
32 court of competent jurisdiction. An aggrieved party may also  
33 exercise the right to bring a civil action in a district court of the  
34 United States without regard to the amount in controversy,  
35 pursuant to Section 300.512 of the Code of Federal Regulations.  
36 An appeal shall be made within 90 days of receipt of the hearing  
37 decision. During the pendency of any administrative or judicial  
38 proceeding conducted pursuant to Chapter 5 (commencing with  
39 Section 56500), unless the public education agency and the parents  
40 of the child agree otherwise, the child involved in the hearing shall

1 remain in his or her present educational placement. Any action  
2 brought under this subdivision shall adhere to the provisions of  
3 subsection (b) of Section 300.512 of Title 34 of the Code of  
4 Federal Regulations.

5 (j) Any request for a due process hearing arising under  
6 subdivision (a) of Section 56501 shall be filed within ~~three years~~  
7 *one year* from the date the party initiating the request knew or had  
8 reason to know of the facts underlying the basis for the request.

